CHAPTER 5. *Development Tools and Techniques*

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CHAPTER 5. *Development Tools and Techniques*

A. Community Development Regulations and Official Controls

1. Introduction

Two categories of development regulations and official controls are commonly found in communities:

- **Zoning**—texts and maps that define permitted uses of property and the bulk, density coverage, and setback limitations for any property.

- **Development and Subdivision**—regulations dealing with the development and division of land. These include plats, short plats, binding site plans, and building, grading and utility permits. All deal with physical development of the ground, or the division of land for sale or lease.

Zoning controls are placed throughout the community. They apply whether or not a property owner seeks to use or modify the land in a particular fashion. Development and subdivision regulations come into play when a property is proposed for change or "development."

2. Zoning

Zoning is defined as "...the legislative division of a community into areas in which are permitted only certain designated uses of land or structures."[1]

Courts have elaborated on the concept as follows:

> *...a part of and an end result or product of effective municipal "planning," for it is through the medium of enacted and enforceable zoning regulations that the aims and objectives of the land-use-classification facet of over-all municipal "planning" may be carried to fruition.*[2]

A zoning ordinance is one of many "official controls" a community can adopt to carry out the objectives of its comprehensive plan. Like the comprehensive plan, zoning ordinances are adopted by elected public officials after a

recommendation by the planning commission. The planning staff again plays a central role in developing models and alternatives, and in providing the technical frame of reference for making informed decisions.

a. The Objectives of Zoning

The general objectives of zoning, as identified in the enabling statutes, are to regulate and restrict land use:

> *In such measure as is deemed reasonably necessary or requisite in the interest of health, safety, morals and the general welfare...*[3]

> *All regulations shall be worked out as parts of a comprehensive plan which each commission shall prepare for the physically and other generally advantageous development of the municipality and shall be designed, among other things, to encourage the most appropriate use of land throughout the municipality...*[4]

The Washington Supreme Court has had numerous opportunities to comment on the proper objectives of zoning:

> *[T]he general purpose of zoning is to stabilize the use, conserve the value of the property, and to preserve the character of neighborhoods; but we insist that the emphasis be placed on the words "general purpose."*[5]

More recently, a court upheld the prohibition of mobile homes in a traditional residential single-family zone, noting:

> *that the purpose of zoning is not to increase or decrease the value of any* ***particular*** *lot or tract. Rather it is to benefit the* ***community generally*** *by the intelligent planning of land uses without unreasonable discrimination.*[6]

The courts also have reflected that preserving the community's civic and social values is a proper objective of zoning:

> *Zoning stabilizes the uses of land and furnishes a protection to residential neighborhoods which will cause them to maintain themselves in a decent and sanitary*

> *way and protects the civic and social values of the American home.*[7]

Finally, the courts have touched on aesthetics as a valid zoning objective:

> *Aesthetic considerations alone may not support invocation of the police powers,... [T]he fact that aesthetics play a part in adoption of zoning ordinances does not affect its validity if the regulation finds reasonable justification in...police power.*[8]

Nevertheless, on the value of aesthetics to the planning process, a Washington court quoted Justice Douglas,

> *The concept of the public welfare is broad and inclusive. ...The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.*[9]

The opinion of Justice Douglas was not lost on the Washington court, which said:

> *If zoning regulations stabilize the value of property, promote the permanency of home surroundings, and add to the happiness and comfort of the citizens, they most certainly promote the general welfare.*[10]

Washington courts have specifically recognized that preserving traditional residential neighborhoods from commercial expansion,[11] or creating commercial centers to meet the demand of growing neighborhoods are valid zoning objectives.[12] Courts have recognized as proper such varied issues as historic preservation,[13] protecting the quality of the environment,[14] and providing adequate housing to meet regional needs.[15]

In addition, the courts have upheld ordinances which look to the quality of buildings constructed, rather than to the use or number of buildings.

> *In this regard, it is generally recognized that the exterior architectural appeal and functional plan of a structure should not be so at variance with either the exterior architectural appeal or functional plan of the structures already constructed or in the course of construction, in the immediate neighborhood, as to cause substantial depreciation of the property value of the neighborhood. ...(Citations omitted.) The difference in appearance and [a] recognized potential effect upon an existing neighborhood of conventional homes is a legitimate and significant factor to consider in enacting zoning laws.*[16]

Strict regulations of signs or advertising material have likewise been upheld under limited circumstances.[17]

The basic purpose of zoning enactments is to promote the general development of the community and to put into practice the goals and policies of a community's comprehensive plan. The courts have recognized that a community does not require specific enabling legislation to adopt regulations that meet community needs.[18] **The principal test is whether the action bears "a substantial relation to the public health, safety, morals or general welfare,"**[19] a traditional police power formulation.

As broad as zoning authority has become, the courts continue to remind us that planning may certainly affect the use of property. Such regulations will be strictly scrutinized to assure a balance between public health, safety, and private interests. The Supreme Court has stated,

> *The basic rule in land use law is still that, absent more, an individual should be able to utilize his own land as he sees fit....Although zoning is, in general, a proper exercise of police power which can permissibly limit an individual's property rights, it goes without saying that the use of police power cannot be unreasonable....While local governments exist to provide necessary public services to those living within their borders and to avoid harms in their protection of the public's health, safety, and general welfare, exercise of this authority must be reasonable and rationally*

related to a legitimate purpose of government such as avoiding harm or protecting health, safety and general, ***not local or parochially conceived, welfare.*** [20]

A community's zoning powers also will be limited by the statutory mandate that communities must use inclusionary techniques to accommodate group homes and other facilities in the community, as required by state law.[21]

b. Traditional Zoning Tools

The adoption of zoning in a community typically involves two activities: 1) adopting a text, and 2) adopting the zoning map. The text defines the categories, uses, and standards of development to be permitted within a particular land use designation. The zoning map applies the adopted land use designations to the community. Zoning controls frequently involve more than designating land uses on maps. In addition to basic use districts and maps, the more significant zoning tools are:

(1) Conditional Uses

Many uses are appropriate for a particular use district, but require special consideration to integrate them into the neighborhood. Conditional uses are permitted only where certain conditions exist. Historically, schools, churches, utilities and similar uses have been allowed as conditional uses.[22] More recently, many communities have tried to integrate small commercial, multi-family, and single-family uses by applying conditional uses and performance standards. The legal presumption is that conditional uses are appropriate in the specified district. Site specific limitations may offset or minimize the traffic, noise, or other special characteristics of the conditional use.

The significance of a conditional use is that objection to it must be based on some particular feature of a project unique to the site, not inherent in the use (such as traffic on Sundays at church). The community has already determined that the inherent characteristics are to be permitted. It will tolerate them, with some additional protection, by establishing the conditional use approval.

(2) Limited Uses

Some uses are difficult to site[23] almost anywhere in a community, but must be provided to serve its needs. Gravel pits, rock quarries, and sanitary landfills, for example, are site dependent uses which may have a large impact on surrounding communities.[24] **Unlike conditional uses, which are presumed to be appropriate, no such presumption exists with limited uses.** A limited use may have to demonstrate community need before a permit is granted.

(3) Special Uses

Some communities have abandoned the conditional use/limited use dichotomy, designating all uses requiring special review as "special uses."[25] **In this case, the limited use/conditional use presumptions do not apply.** Similarly, an applicant would only have to prove "community need" if this was determined to be an important factor; and if the issue were included specifically in criteria for the approval process.

(4) Variances

A variance is nothing more than a waiver of one or more specific physical (rather than use) standards, such as bulk, yard, or site coverage contained in an ordinance.[26] The variance is used to waive a condition that creates a particular hardship. **Variances are to be narrowly construed and used only in extreme circumstances** since, by nature, they are at odds with the fundamental doctrine that entitles all persons to equal protection and enforcement of the laws.

The Planning Enabling Act details several prerequisites which must be met before a variance can be granted:

- Due to special circumstances of the subject property (including its size, shape, or surroundings), strict application of the zoning ordinance would deprive it of rights and privileges enjoyed by other properties in the vicinity and under identical zone classifications.

- That the granting of the variance will not be materially detrimental to the public welfare; or injurious to the property or improvements in the vicinity and zone in which the subject property is located.

- The situation does not arise from actions of the applicant or the predecessor in interest after the zoning ordinance was adopted.[27]

In addition, some variance requests require the review and approval of another agency or governmental body before the variance can be granted.[28]

PRACTICE TIP: ***All too often, variances are approved because a board believes certain zoning requirements may be unfair or unreasonable. While fairness and reasonableness may be grounds for amending a statute, they cannot be substituted for the required findings if an ordinance is to have any integrity or validity.[29] If a common occurrence leads to multiple variance requests, the community's ordinance and its comprehensive plan, if inconsistent, should be amended to address the situation.***

A "use" variance permits a use that is otherwise prohibited in the neighborhood. **A use variance does not meet traditional variance tests, and is not considered lawful.** It is the de facto equivalent of a spot zone, without the formality of trying to amend the ordinance to justify the public interest. If a certain situation produces frequent variance requests, a community should amend its codes to accommodate it.

(5) Planned Unit Developments/Planned Residential Development

One of the tools appearing frequently in zoning ordinances is enabling legislation for planned unit developments (PUDs). **A PUD is an authorized "floating zone,"** which may or may not be specifically located when the zoning text and map are adopted.[30] The zone may then be adapted to any qualifying parcel under the PUD ordinance.

The PUD may eliminate (or reduce) many of the bulk or density requirements of the underlying zoning district. Through a mix of residential and/or commercial types of development, it can create an entirely unique district. **PUDs should be authorized in three ways:** 1) through broad policy goals in the comprehensive plan; 2) enabling language in the zoning ordinance (often with suitable areas designated on maps); 3) and a site plan review and binding site plan for the overall development. PUDs also need mechanisms to assure continuity and the ability to meet community changes over time. Planned unit developments have been approved by the courts even though no state-authorizing legislation exists.[31]

A planned residential development (PRD) mirrors the PUD, but is more strongly oriented to a project's residential nature. The PRD is more flexible than traditional subdivision, platting, and site plan approaches.

The GMA also specifically authorizes new, fully-contained communities outside urban growth areas.[32] A PUD form of zoning will likely be required to allow the design and location of such communities with suitable standards and controls.

(6) Contract Rezones

PRACTICE TIP: ***All conditions of the contract should be met before final action is taken to create an amended zone. In addition, completion of these required conditions should be tied to utility hookup, certificates of occupancy, or other steps in construction development.***

Unlike development approvals, **rezones involve amending an ordinance.** When a legislative body wants to approve a rezone but impose conditions to mitigate impacts of the change, it may do so. However, this requires a two-step determination: (1) Is the rezone in the public interest (that is, consistent with the comprehensive plan)? (2) Are the conditions imposed attributable to new use categories approved for the property? If these two tests are met, the courts will uphold a contract rezone.[33] A community should make specific factual findings on both issues as part of the contract rezone approval process.

The rezone process is limited by the requirement that all changes be made only once a year as an amendment to the comprehensive plan, so cumulative impacts will be considered.[34] Although the development regulations can be amended at any time, they must be consistent with the comprehensive plan. If the rezone is inconsistent with the comprehensive plan, the rezone must await an amendment to the plan during the annual amendment process.

(7) Spot Zoning

Spot zoning is an action,

> *by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan. Spot zoning is a zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole.*[35]

Spot zoning is prohibited because it denies equal protection and enforcement of the laws to the benefit of a small group or individual. When a zoning change is inconsistent with the comprehensive plan, the change is presumed to be a "spot zone."[36] Conversely, when a change in zoning is consistent

with the comprehensive plan, the plan—not the spot zone—will be presumed in the public interest. This is true even if the rezone affects just one parcel.

(8) Nonconforming Uses

PRACTICE TIP: ***The key question in any nonconforming use case involves enlargement vs. intensification. Enlargement expands the area in which a nonconforming use takes place, while intensification expands the activity within an existing area. Enlargement is prohibited without specific legislative authorization, but intensification within an existing structure is allowed.***[37]

Nonconforming uses lawfully exist at the time a zoning ordinance is adopted, but become inconsistent when there is a rezone.[38] The presumption is that the community eventually wants to eliminate the nonconforming use, but allows it to continue to avoid extreme hardship.[39] Communities may continue, intensify, and modify nonconforming uses through appropriate provisions in the ordinance.

Unless authorized by statute, nonconforming uses traditionally cannot be expanded or enlarged;[40] once abandoned, they may not be reinstated. Abandonment, however, is an intentional act. The courts have refused to accept statutory limitations (e.g., six months), as any more than presumptions of intentional abandonment.[41] This is particularly true of intermittent uses, such as gravel pits.

(9) Rezones/Down Zones

The term "rezone" is undefined in Washington law. Using the "I know it when I see it" approach, the Supreme Court has taken the following position: **A rezone authorizes uses on property that differ substantially from terms of the prior zoning designation**. Thus, a city may not use a PUD to approve multi-family housing in a single-family zone without amending the zoning map through a formal rezone.[42]

The Court of Appeals has reaffirmed that consideration of a PUD is the equivalent of a rezone,[43] meaning that an applicant has no vested rights to have a PUD approved.

Since most communities have zoning in effect, requests for land use changes will involve a rezone request to the city. **Rezones differ from zoning actions in several respects**:

- Parcel-specific rezones do not enjoy the presumptions of validity legislative activities have (as in area-wide rezones); the property owner/applicant must prove that a parcel-specific rezone is valid.[44]

- Rezones must be based on a change of circumstances or community needs, or implement

the policies of an adopted comprehensive plan.[45] They cannot be based exclusively on the desires of public interest groups.[46]

- The burden of proof required to downzone a property against the wishes of an owner is higher than the burden on an owner who seeks a zoning change.[47]

- Rezones contrary to the comprehensive plan are generally considered to be spot zones. These are unlawful because they benefit private interests rather than the public.[48]

- Downzones are subject to the same consideration as upzones. A downzone must be consistent with the comprehensive plan, and not merely the desires of a neighborhood. The primary limitation on downzones is that the community action must meet a public objective. It must also permit reasonable use of the property after the downzone.[49]

PRACTICE TIP: ***Rezones and downzones are more difficult to obtain as a result of the GMA. Zoning ordinances must be consistent with the comprehensive plan, and the plan can only be amended once a year.***

(10) Vested Rights

The Washington Supreme Court has acknowledged that development rights are a "valuable right in property."[50] The vested rights doctrine in Washington was adopted to protect development rights. Under this doctrine, developers who file a timely and complete permit application obtain a vested right to have their application processed according to the zoning and building ordinances in effect at the time of the application.

At what point does a person have a right to retain a use or structure authorized by a zoning code, after that code is changed?

Nonconforming use is one attribute of the vested rights doctrine. The use or structure is "grandfathered," or vested, because it is already present. But what about cases in which an applicant has applied for a use at the same time local ordinances are changing? Washington has a straightforward test for vesting:

- *Building permits are vested as of the date a complete application is filed.*[51]

- *Plats (formal plats and short plats) are vested when a fully completed application is filed.*[52]

- *Communities shall define the requirements of a fully completed application by local ordinance.*[53]

- *Communities may not artificially delay the vesting time to permit changes.*[54]

Washington courts have applied the vested rights doctrine to other types of development permits, such as conditional use permits,[55] shoreline permits,[56] grading permits,[57] septic tank permits,[58] and phased development under a binding site plan.[59]

A vested project means that the project is measured against the rules in place at the time of vesting—even if those rules have changed by the time construction starts.

(11) "Innovative Techniques"

The Growth Management Act specifically identifies **density bonuses, design guidelines, conservation easements, cluster housing, planned unit developments, and transfer of development rights** as "innovative techniques" to accomplish growth management goals.[60]

"Innovative techniques" can be used to balance competing needs in a community. A regulation may try, for example, to protect a critical area by prohibiting its use for development, requiring certain buffers, or excluding it from density calculations. This scenario leaves little incentive to identify critical areas or nurture marginal critical lands. The result, particularly in urban areas, could limit land available for infill, affordable housing, or other competing needs.

Innovative techniques can offer incentives and help create or protect critical areas and buffers. If wetland and buffer areas are set aside for open space, a landowner might receive density bonuses in return. Owners can then build at higher densities or use smaller lots, allowing cities to meet densification and urbanization objectives while retaining and protecting critical areas.

3. Moratoriums and Interim Controls

Moratoriums and interim zoning controls are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development.[61] Notice and public hearing is not necessary prior to enactment of a moratorium or emergency zoning measure, but a public hearing must be held within 60 days of its adoption. If such requirements were applied to interim zoning decisions, developers could frustrate effective long-term planning by obtaining vested rights to develop their property, thereby rendering the emergency plans moot. Nevertheless, local government may not change the rules applicable to an already submitted application.[62]

B. Platting and Permits: The Development Process

1. The Platting Process

A plat is a map filed with the county auditor's office. It describes a particular parcel of property, typically small divisions or "subdivisions" within the larger parcel.

Washington state has always had a law that requires persons selling lots from within a plat to file the plat with the county auditor.[63] A plat dedicates property within the plat, such as roads and parks,[64] and provides a convenient way to describe individual lots for sale purposes. The filing requirement also assures that back taxes and assessments have been paid on the larger parcel prior to sale of the smaller lots.[65]

Washington adopted its first modern subdivision statute[66] in 1936. It required the local approving authority to approve the plats prior to filing, and to inquire into,

> *the public use and interest proposed to be served by the establishment of the plat, subdivision or dedication.*[67]

The approving authority also was required to look into the streets, playgrounds, public ways, and all other relevant facts to determine (a) that the development made appropriate provision for physical improvements; and (b) "that the public use and interest...be served by the platting and subdivision."[68] If these criteria were not met, the plat could be denied. In deciding whether to approve or deny plats when the public interest was not served, the approving authority

was to consider the impact of the plats on the entire community, as well as physical improvements within the plat.[69]

The present Subdivision Act,[70] in force since 1969, presents the following definitions:

"Subdivision" is the division or redivision of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in [the definition of "short subdivision" below].

"Short subdivision" is the division or redivision of land into four or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership: Provided, That the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine.

"Binding site plan" means a drawing to a scale specified by local ordinance which: (a) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local government body having authority to approve the site plan; and (c) contains provisions making any development be in conformity with the site plan.

"Short Plat" is the map or representation of a short subdivision.[71]

The statute contains seven exemptions from formal platting requirements:

FORMAL PLATTING EXEMPTIONS

1 Cemeteries;

2 Land divisions creating parcels over five acres in size (as measured to the center of the road);

3 Land divisions made by wills or the laws of descent;

4 Industrial parks when such parks are covered by a binding site plan review process;

5 Mobile home parks when such parks are covered by a binding site plan review process;

6 Boundary line adjustments creating no new lots; and

7 Condominiums if a binding site plan has been approved.[72]

Many communities implement some form of control over "large lots," or parcels over five acres in size. These large lot ordinances remove the exemption from the Subdivision Act, and may invoke the same rules that apply to other subdivisions.[73]

Criteria for approving a subdivision include a determination by the approving body that the plat provides appropriately for public improvements and amenities and that it serves the public interest.[74] If the plat is deficient, or does not serve the public interest, it may be denied.[75]

The platting statute specifically provides for plat disapproval in flood or swamp conditions. Permission of the Department of Ecology is required to approve a plat in any state-designated flood control zone.[76] Limitations are also placed on plats in irrigation districts.[77]

A plat is processed in two phases: preliminary plat and final plat.[78]

a. Preliminary Plat Approval Process

A preliminary plat is the conceptual approval plan. It shows the proposed development and amenities, and is subject to a public hearing before a planning commission[79] or a hearings examiner[80] and the approving authority. The hearing is to determine:

> *(a) If appropriate provisions have been made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students. . . ; and (b) whether the public interest will be served. . . .*[81]

The planning commission's recommendation is advisory.[82] The hearings examiner's recommendation may be advisory or final, depending on the option selected.[83] Under regulatory reform, only one public hearing may be conducted. (See Chapter 3.)

The power of legislative officials to approve or condition plats is as broad as the perceived public interest. However, the approving authority must act in a timely fashion, and according to adopted policies in effect when the application is filed.

The approving authority may make construction of necessary public facilities a condition of plat approval.[84] If warranted, it may change conditions in successive divisions to meet increasing public standards.[85] However, the legislature has expressly limited the local government's authority to impose fees in lieu of an improvement, except as provided by statute.[86]

Approval of preliminary plats is a "quasi-judicial" responsibility of local authorities. As such, all hearings and decisions must be made on the record, with all parties given an opportunity to appear and be heard.[87]

The approving authority must state, in writing, findings and reasons to support the approval or denial.[88] This requirement is now codified:

> *No plat or short plat may be approved unless the city, town, or county makes a formal written finding of fact that the proposed subdivision or proposed short subdivision is in conformity with any applicable zoning ordinance or other land use controls which may exist.*[89]

IMPORTANT NOTE:

In 1997, the Washington Supreme Court ruled that where there is inconsistency between a specific zoning regulation and the comprehensive plan, the zoning regulation prevails.[90] ***Referring to pre-GMA cases, the court ruled a comprehensive plan is not a document designed for making specific land use decisions, although the court noted that proposed land use decisions must "generally conform" to the comprehensive plan.***

The court's decision is consistent with the GMA, which requires a local government subject to the GMA to adopt specific development regulations that implement and are consistent with the adopted comprehensive plan. Accordingly, to give full legal effect to the policies, goals, and substance of adopted comprehensive plans—andd the time, talent, and money expended in their adoption—local governments should take care to ensure their development regulations adequately implement and are consistent with their adopted comprehensive plans.

Courts have ruled that failing to prepare findings is "arbitrary and capricious."[91] The standard of review for overturning land use decisions is no longer based on arbitrary and capricious conduct.[92] Failure to prepare findings is now reversible error based on the local government's failure to follow prescribed process.

The time for filing an appeal begins to run from the date on which the land use decision is issued.[93]

The approving authority must consider the environmental consequences of a proposal, and may condition or deny a plat for environmental reasons.[94]

The plat must be reviewed and considered, based on plans in effect at the date of filing a complete application and development plans.[95] It is inappropriate to consider a pending, proposed, or possible change in zoning or other changes in land use regulations as a basis for approving or denying a project.[96]

Consistency with the comprehensive plan is one measure of the public interest served by a plat.[97] Because "consistency" is now a prerequisite for project approval, a project can be denied if it is inconsistent with the comprehensive plan.[98]

Through interim zoning, municipalities have ample authority to protect themselves in an emergency. The court has approved interim zoning on an emergency basis without lengthy notice and hearing requirements:

> *We believe the better-reasoned view recognizes that if notice and hearing requirements were applied to interim zoning decisions, developers could frustrate effective long-term planning by obtaining vested rights*

> *to develop their property. This is especially true in Washington where an owner's right to use his property under existing zoning vests upon the application for a building permit. We, therefore, hold that the act's notice and hearing requirements do not apply to emergency ordinances enacted pursuant to RCW 36.70.790.*[99]

A county has 90 days to act on a preliminary plat application, not including time limits imposed by SEPA.[100] The 90-day limit is mandatory. Failure to "approve, disapprove or return to the applicant for modification" any plat within 90 days of filing is grounds for a mandamus action requiring hearings.[101] Further, by statute, such failure may constitute grounds for municipal liability.[102]

Once a preliminary plat is approved, the applicant has five years to file a final plat.[103]

Before the preliminary plat expires, there can be no changes to the plat approval conditions. When the local government adopts additional provisions for extensions, however, it can modify the approval conditions during those extension periods.

b. Final Plat Approval Process

To file a final plat, a developer must construct or bond all required improvements of the preliminary plat, and submit a final plat for approval before filing with the county auditor.[104]

Bonding is authorized in pertinent part:

> *(1) Local regulations shall provide that in lieu of the completion of the actual construction of any required improvements prior to the approval of a final plat, the city, town, or county legislative body may accept a bond, in an amount and with surety and conditions satisfactory to it, or other secure method, providing for and securing to the municipality the actual construction and installation of such improvements within a period specified by the city, town, or county legislative body and expressed in the bonds. (2) In addition, local regulations may provide*

for methods of security, including the posting of a bond securing to the municipality the successful operation of improvements for an appropriate period of time up to two years after final approval.[105]

Final plats are "as-built" drawings of the plat as constructed. They must conform to the approved preliminary plat, showing lots, streets, easements, and all other elements required as conditions of preliminary plat approval. The local administrative offices must verify that the final plat meets all conditions and statutory requirements. Once necessary signatures have been obtained, the approving authority approves the plat. The plat may then be filed with the county auditor, and the developer may offer the lots for sale.[106]

PRACTICE TIP:

Communities should eliminate ambiguity by suggesting that the same provisions apply to short plats, large lots, and binding site plans.

One significant advantage of a final plat is that it provides a five-year protection against zoning changes.[107]
Enforcement of the platting requirements includes injunctive relief,[108] withholding development permits,[109] and criminal penalties.[110]

On illegally platted lots, a community can only issue permits to innocent purchasers. All others may be required to make plat improvements before obtaining any development permits. The lot purchasers have a statutory cause of action against the illegal subdivider, and may rescind the sale if necessary improvements cannot be made.[111]

c. Short Plats

The local legislative agency has the same authority over short plats that it has over plats. The procedure is greatly simplified, however (usually without any hearings), and may contain requirements that are the same or wholly different than those governing preliminary plats.[112] Short plats must be processed within 30 days.[113]

Short plats typically contain a map identifying the lots to be created and a declaration dedicating right-of-way or other required approval conditions. Short plats may not be divided again for five years without processing a long plat.[114] Short plats must be filed with the county auditor to be effective.[115]

2. Site Plan Review

A binding site plan is defined as:

> *a drawing to a scale specified by local ordinance which: (a) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local government body having authority to approve the site plan; and (c) contains provisions making any development be in conformity with the site plan.*[116]

The Legislature has created three exemptions from the subdivision law for parcels developed through binding site plan review. These exemptions apply when the city, town or county has approved a binding site plan for use of the land according to local regulations:

1) *Divisions of land into lots or tracts classified for industrial or commercial use;*

2) *A division for the purpose of lease, when no residential structures other than mobile homes or travel trailers are permitted on the land.*

3) *A division as a result of subjecting the property to the Washington Condominium Act.*[117]

Mobile home parks, industrial site plan programs and condominiums require the local jurisdiction to adopt site plan review ordinances.[118] These can create more problems than they solve.

The exemption was created to avoid the two-phased approval process (preliminary and final). But unless a community adopts some form of conditional/final approval mechanism, it may lose control over the improvements needed for final development.

PRACTICE TIP: ***Consider including a clearly written section in the municipal code which authorizes the sale or lease of lots in a binding site plan, and cross-references the platting code.***

Further, while mobile home site plans are typically used for lease-only operations, most industrial site plans specifically contemplate lease or sale. Title insurance companies and financial institutions do not accept "binding site plans." Without platting, they may be reluctant to insure or finance lots created in such a fashion.

3. Common Platting Problems

a. Findings: The Basis for Approval or Denial

The courts require written findings to deny a preliminary plat, and failure to enter such findings will result in a court reversing a land use decision. The Growth Management Act now specifically requires "written findings" to show that adequate provisions for amenities, schools, and utilities have been made; and has made public use and interest a prerequisite for approval. Furthermore, approving authorities cannot merely deliver a boilerplate recitation of impact on schools, roads, and the bucolic "rural way of life" to support denial. They must show why such facts are true, and how they relate to the area being developed.[119] Once properly identified, however, both existing and potential future impacts can be the basis for properly denying a plat.[120]

b. Old Plats

Old plats fall into three categories: (1) those filed before 1909; (2) those filed before 1937;[121] and, (3) those filed before 1969.[122]

The 1937 Platting Act was the first Act in which plats were reviewed for adequacy of public improvements and facilities. Some communities use the 1937 law as the date by which they will recognize "existing lots of record." Prior to 1937, most lots were paper plats. Many communities do not recognize the individual lots as separate building parcels, but look instead to an individual's total ownership. An additional problem, arising with plats filed before 1909, is that streets may have been vacated by operation of law. Under state law, if county streets platted before 1909 were not opened to public travel within five years of dedication, those streets are vacated.[123] Many plats filed before 1909 have no public roads, due to this vacating process. This can be a trap for the unwary because the plat filed in the county auditor's office or recorder's records will not show the automatic street vacation.

c. Short Plats Within Plats

A common practice in Washington has been to permit short plats within previously platted areas. This practice is questionable under the present statute, which defines the term "subdivision" as "any redivisions" of land.[124] At least one superior court,[125] has declared the practice illegal. In 1980, an Attorney General's opinion[126] said that division of lots within an existing plat into four or fewer lots constitutes "resubdivision," and may not be accomplished by a short subdivision. Further, such action does not require vacating the underlying plats,[127] but may require action if a street is to be vacated or relocated.[128] In 1981, the Legislature redefined short plat to include redivisions, authorizing short plats within plats.

d. Short Plats and Contiguous Property

PRACTICE TIP: ***The best solution to this problem is for the jurisdiction to adopt an ordinance defining its policy. It would appear that if separate parcels are owned by the same individual, no basis exists to declare them as separate parcels outside of plats. Thus, all contiguous property owned by any individual outside a plat is "property" subject to "subdivision" or "short subdivision," regardless of how many lots the subdivider may own within old plats (pre-1937 plats), assessor parcels,*** [129] ***or lots in a recorded survey.*** [130]

Ownership of several contiguous parcels can cause confusion when determining whether four or more lots are created. In some jurisdictions, each separate parcel may be divided as provided by law, allowing short plats in each parcel. Others hold that, for development purposes, the entire ownership must be considered in determining the number of lots.

e. Boundary Line Adjustments

Boundary line adjustment is a change to a lot that moves a boundary line recognized in the local code (as in a "platted lot" or "tax lot of record"). A boundary line adjustment normally will not be permitted if it creates a building lot smaller than zoning minimums. A boundary line adjustment cannot be used to create a new building lot that did not exist before (that would be a subdivision). The Attorney General has ruled that a boundary line adjustment cannot be used to divide an existing lot in half—to add to adjoining properties—because this would change the number of lots.[131]

Communities should set simple, understandable administrative rules for boundary line adjustments, which are often used to allow minor adjustments accommodating driveways, garages, setbacks, and other details.

In 1996, the Legislature added a new process for boundary line adjustments, allowing private parties to resolve boundary disputes without filing a lawsuit or requesting government approval.[132]

f. Sale of Lots Prior to Recording of Plat

Lots cannot be sold within a preliminary plat or subdivision before the plat is recorded. State law makes all such sales illegal and subject to restraint by the prosecuting attorney.[133] In 1981, the Legislature passed an amendment which provides:

> *If performance of an offer or agreement to sell, lease, or otherwise transfer a lot, tract, or parcel of land following preliminary plat approval is expressly conditioned on the recording of the final plat containing the lot, tract, or parcel...the offer or agreement is not subject to [injunctive action or penalties] and does not violate any provision of this [statute]. All payments on account of an offer or agreement conditioned as provided in this section shall be deposited in an escrow or other regulated trust account and no disbursement to sellers shall be permitted until the final plat is recorded.*[134]

Note: The amendment applies only to subdivisions, not short subdivisions. It is still common practice to sell lots in a short plat subject to short plat approval.

g. Roads, Parks, and Open Space

The primary purpose of plats is to clearly define public and private rights with respect to roads, parks, and open space. Dedications to public use must be spelled out clearly on the final plat, although any ambiguity with respect to roads will favor public roads.[135] The opposite appears to be true with respect to parks and open space. The presumption appears to be that a park identified on a plat is private (for the benefit of the lot owners only), unless a clear intent is expressed to dedicate the park to public use.[136]

If the hearings examiner is to rule on adequacy of open space, the city must establish proper criteria and a nexus to the expected impact, particularly before "public" open space may be acquired.

h. Dedications and Vacations

Dedications and vacations are the means of creating or eliminating interests within a plat. Dedication grants a fee title or an easement for public use. Vacation eliminates the public's rights to or over a parcel of property, or to terminate a plat. Problems often arise in this context because the enabling legislation lacks sufficient clarity.

(1) Dedications

The primary purpose of a plat is to secure the "dedication" of roads, parks, and other public spaces within the plat. This concept was embodied in the original platting act.[137]

The concept has continued through to present law, which requires a certificate of dedication to create public versus private streets.[138] The interest in any dedication for road or highway purposes is an easement for public travel. The fee title remains with abutting land owners.[139]

Courts have indicated, however, that merely filing a plat does not automatically create a binding dedication.[140] Areas other than public ways could be dedicated to public use by a plat, but three conditions must be met:

> *(1) An affirmative act of donation or grant by the donor or grantor, noted as such on the plat or expressed in some other instrument;*
>
> *(2) the donee or grantee must be named or specifically indicated;*
>
> *(3) the specific use to which the donated or granted property is to be devoted, according to the intention of the donor or grantor, must be expressed or provable in some way.*[141]

In addition to dedication, public roads may be acquired prescriptively.[142]

Once dedicated or acquired by the municipal agency, public rights over property may only be terminated by vacation or a conscious act of abandonment. Except in extreme circumstances, public rights cannot be lost by adverse possession.

(2) Vacations

Any study of the law of vacations of public rights proves that it is easier to give than to retrieve. While dedications require little more than a donative intent and acceptance by the public, vacations require a complicated public process.

Vacations within a plat are initiated by unanimous petition of all parties having ownership interest in that portion of the subdivision to be vacated.[143] A subdivision or any portion of a subdivision (or any area designated or dedicated for public use within the subdivision) is subject to vacation.

Before the vacation can be approved, the approving authority must conduct a public hearing to determine if the vacation serves the public use and interest.

If the vacation involves a public road or street, particular statutes must be followed.[144]

Title to vacated property—other than a street or road—may vest adjoining owners, as determined by the approving authority. Vacated streets wholly within a plat may vest in the subdivision owners.

Vacations of public roads may occur by operation of law. County roads that remain closed to public travel for five years will lose the right of public access and will be vacated by operation of law.[145] The law was amended in 1909 to exempt roads within subdivisions. As a result, many plats that were recorded before 1909 have no public roads, due to this automatic vacation.

One important exception to the road vacation statute limits the rights of cities to vacate roads abutting water:

> *A city or town shall not vacate a street or alley if any portion of the street or alley abuts a body of fresh or salt water unless: (a) The vacation is sought to enable the city or town to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses; (b) The city or town, by resolution of its legislative authority, declares that the street or alley is not presently being used as a street or alley and that the street or alley is not suitable for any of the following purposes:*

> *Port, beach or water access, boat moorage, launching sites, park, public view, recreation, or education; or (c) The vacation is sought to enable a city or town to implement a plan, adopted by resolution or ordinance, that provides comparable or improved public access to the same shoreline area to which the streets or alleys sought to be vacated abut, had the properties included in the plan not been vacated.*[146]

In 1982, the Legislature required the Department of Natural Resources (DNR) to plat all first class tidelands and waterways. It included express provisions about maintaining the waterways and vacating streets or access points.[147]

4. On-Site Development Conditions

A municipality's authority to specifically condition a project based on identified on-site needs is well established in case law and by statute.

Building permits may be conditioned.

> *The county's authority to attach conditions to a building permit is not contested. Indeed, [McQuillin] suggests that "reasonable conditions and requirements may be contained in, or attached to, a permit and compliance therewith after its issuance made essential to its continued force, effect and validity."*[148]

Plats may be specifically reviewed for adequate access to and within the proposed subdivision; and conditions may be imposed that regulate or limit access.[149] For example, as a condition of plat approval, the approving authority may require construction of on-site facilities, such as roads or utilities, to approved county standards.[150] However, the Legislature has limited local government's authority to impose fees to pay for a pro rata share of improvements to public facilities.[151]

In a case decided by the Court of Appeals prior to the Legislature's enactment of the restrictions on imposing impact fees provided in Chapter 82.02 RCW, the Court said:

> *Under RCW 58.17.100, before approving a subdivision a local government is required to*

> *make sure that appropriate provisions have been made for the public health, safety and general welfare. It must consider the adequacy of access to and within the proposed subdivision, and it is empowered to condition approval of the plat upon adequate access. The information collected in the environmental review process indicated that the roads which would receive most of the traffic from the subdivision simply were not adequate to handle it. . . . A need for the improvements was clearly demonstrated, directly related to the traffic which would be generated by the development. The City acted reasonably to meet that need. The conditions were not arbitrary and capricious.*[152]

The court then responded to the argument that requiring the developer to finance his share of impacts is an unconstitutional tax:

> *Not all requirements for payment by a government body are taxes. Where the fees are intended primarily to regulate the development of a specific subdivision and not simply to raise revenue, they will not be considered taxes. Widening streets and installing controls for the safety of pedestrians and vehicle traffic are regulatory measures within the proper exercise of the City's police power, and it can require that the cost of these measures be borne by those who created the need.*
>
> . . .
>
> *On these facts, we fail to see how the City acted unfairly in carrying out its responsibilities under RCW 58.17.100.*[153]

This case is quoted at length for two reasons: it provides the court's justification for upholding the street widening and fund contributions; and it demonstrates the value of environmental documents in identifying the need for and scope of improvements.

Road and intersection improvements have been upheld as a condition to a concomitant agreement.[154]

5. Off-Site Development Conditions

Project environmental impacts may require consideration and (by implication) mitigation of off-site impacts, including those outside jurisdictional boundaries.[155] In the case quoted below, the Court of Appeals specifically upheld an action requiring improvements in another jurisdiction:

> *The Millers next contend that even if such conditions could be imposed under proper circumstances, they cannot involve property outside the local government's jurisdiction. We disagree.*
>
> *The City was required to consider effects of the development outside its territory and mitigate them if possible. Under the rule established by these cases, Port Angeles had only two alternatives. It had to find a way to mitigate the effects on the two roads, or it had to deny the Millers' application. It is more sensible to permit a municipality to deal positively with problems like these than to require it to avoid the problems by denying the developments. Therefore, we hold that a city may properly require an improvement outside of its territorial jurisdiction if it conditions that requirement on annexation or the consent of the government having jurisdiction.*[156]

Courts have identified two tests in connection with required off-site improvements. Referring to the leading case for the conservative view, the Illinois Supreme Court stated:

> *If the requirement is within the statutory grant of power to the municipality and if the burden cast upon the subdivider is specifically and uniquely attributable to his activity then the requirement is permissible.*[157]

Referring to the leading case for the more liberal view, the California Supreme Court stated:

> *In a growing metropolitan area each additional subdivision adds to the traffic burden. It is no defense to the conditions imposed in a subdivision map proceeding that*

their benefit will incidentally also benefit the city as a whole.[158]

In two recent cases from the Washington Supreme Court, the court considered whether ordinances requiring the dedication of park and open space land violate the prohibition on development taxes.[159] The court carefully scrutinized two park and open space ordinances, with special attention on the sections in those ordinances that allow payments in lieu of dedications. The court concluded that these ordinances do not violate the prohibition on development taxes if the following criteria are met:

(1) The ordinance must allow the developer to choose between dedication and payment;

(2) The dedication/payment must be "voluntary," that is, a choice between dedication/payment or no approval;

(3) Any payment in lieu of dedication must be spent on specifically identified capital improvements within the same geographic area of the development; and,

(4) The dedication/payment must be reasonably necessary as a direct result of the development.[160]

In support of this last criteria, the Court implied that local governments must provide the detailed support for a "nexus" between the dedication/payment and the impact of the development, and must prove a "rough proportionality" between the two.[161]

By its actions, the Washington Legislature has indicated that, in most cases, the "uniquely attributable" theory should prevail. The state preempted municipality development fee authority and provided:

... no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the

> *development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.*
>
> *This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat....*
>
> *No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.*[162]

Thus, it would appear that so long as improvements are required on-site or directly adjacent to it, and they are "roughly proportional" to impacts caused by the project, such conditions will be upheld.[163]

6. LIMITATIONS ON DEVELOPMENT CONDITIONS

If jurisdictions impose conditions beyond the standards authorized by city codes or regulations (or if no adequate codes and regulations exist), courts will strike down the conditions.

Where a project conforms to existing plans or zoning ordinances, it is erroneous to deny or condition the project on policy plans yet to be developed.[164]

Where a project is consistent with applicable codes, it is error to deny a permit on grounds not established by adequate standards, or supported by specific reasons.[165]

Where an ordinance seeks to grant administrative discretion without providing adequate standards upon which to exercise the discretion, the ordinance is void.[166]

Outside the platting context, courts have held that access to a public thoroughfare is one of the attributes of property ownership. Unreasonable limitation of such rights requires compensation.[167]

C. Vested Rights

In Washington, a vested right to subdivide is established as of the date a "fully completed application for preliminary plat approval...has been submitted...."[168] In one case, a county ordinance stated that vesting was applicable only after completing a final environmental impact statement. The implication of the ordinance was that new development regulations not yet adopted could be attached to the development before the SEPA process had been completed.

Local government may impose restrictions on development through SEPA, even though the vested rights doctrine would prohibit imposing those restrictions directly through other land use control ordinances. However, restrictions imposed under SEPA must be based on local SEPA policies that were in effect when the affected development vested its rights. *Victoria Tower v. Seattle.*

Fluctuating policy would be quite possible. The court invalidated the county's ordinance because it conflicted with state platting laws.[169]

Property development rights vest upon filing a complete application for a building permit, or for a preliminary plat. However, the decision in *Erickson v. McClerran* makes clear that local governments may adopt a local vesting ordinance which vests use permits after permit application, as long as the developer could vest the project at any time by applying for a building permit.

The courts have addressed vesting rights in a number of recent decisions. In *Western Homes v. Issaquah,*[170] the grant of a variance created a vested right in the property for the owner to develop property in accordance with the conditions of the variance. The fact that the property owner had voluntarily worked with City of Issaquah staff to attempt to comply with the new ordinances and regulations did not permit the city to revoke the variance.

In *Hale v. Island County*, a landowner sought judicial review of the county's decision to grant preliminary use approval of a rezone application under a two-step rezone process. In the first step, the county granted preliminary use approval. The second step required approval of a specific site plan. After the county granted preliminary use approval, and the landowner submitted its application for final approval, the zoning provision on which the preliminary approval was

based was invalidated by the Growth Management Hearings Board. The court held that upon issuance of preliminary use approval, an applicant obtains a vested right to have its final site plan application processed under the code provisions then in effect.[171]

In *Noble Manor v. Pierce County,*[172]the Washington Supreme Court confirmed that the vesting rights doctrine gives a party the right to have its entire application considered under the land use laws in effect at the time of application. In this case, the developer submitted an application for a short plat on which it could build three duplexes. The Court rejected the County's argument that the only right that vested was the right to subdivide the property in accordance with existing regulations, holding that both the request to subdivide and the request to develop or use the property vested at the time of application. The question of whether a subdivision application vests the proposal under all land use controls then in effect is currently before the state appellate courts.

Finally, once a municipality approves a planned unit development, the developer has a vested right to build out the improvements within five years from the date of approval, unless the legislative body finds that a change in conditions has created a serious threat to the public health and safety. A city must issue all ministerial permits necessary to complete the project without delay, assuming all zoning and building code regulations are met.[173]

D. Development Fees/Impact Fees

1. 1990 Impact Fee Legislation[174]

The Legislature created an exception to the general ban on impact fees in 1990, by specifically authorizing impact fees that make growth pay for growth. The statutory prerequisites are that impact fees

- *Shall only be imposed for system improvements that are reasonably related to the new development;*
- *Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and*

- *Shall be used for system improvements that will reasonably benefit the new development.*[175]

The Legislature also limited impact fees to those expended for

> *public facilities [public streets and roads; public parks, open space, and recreation facilities; schools; and fire protection facilities not in a fire district] which are addressed by a capital facilities plan element of a comprehensive land use plan. . . . [The] continued authorization to collect and expend impact fees shall be contingent on...adopting or revising a comprehensive plan...and on the capital facilities plan. . . ."*[176]

The legislation identifies key prerequisites for a valid impact fee, whether interim or permanent. To determine the "proportionate" share to be charged as an impact fee, the local ordinance shall include:

- *The costs of public facilities necessitated by new development;*
- *An adjustment...for past or future payments made...by new development...;*
- *The availability of other means of funding public facility improvements;*
- *The cost of existing public facilities improvements; and*
- *The methods by which public facilities improvements were financed.*[177]

The definition of impact fee is very specific:

> *"Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that*

reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.[178]

The statutory criteria follow well-established prerequisites for a valid impact fee, recognized by courts across the country. In form and scope the enabling legislation is traditional, following well defined guidelines.

In a recent development fee case the court of appeals held that Bothell's development fee, payable in lieu of dedication of park land, was invalid.[179] Bothell attempted to justify the fee as five percent of land value in an average development, claiming the fee was lower than if it had been calculated using actual land values for the development. The court held that the fee was invalid because it was not calculated on a site-specific basis.

2. Land Use Regulation—The Theoretical Base For Impact Fees

By using the term "impact fee," and specifying the traditional impact fee analysis, the Legislature acted to preclude charging developers a special tax for new facilities. Instead, they looked to municipal regulation as the basis for financial exactions that provide a proper share of needed facilities. This focus on regulatory power limits the scope and range of potential impact fees to those items which are the proper subject of municipal development regulations.

E. Development Limitations—The Final Word

In viewing a prospective development, limitations on a municipality to impose off-site improvements or development fees is a mixed blessing. In the final analysis, the community's only alternative may be to say "no!" For example, in one case the county commissioners made the following findings in denying a project, all of which (and probably any of which) would have been adequate to justify denial:

- *Adverse impact on local traffic patterns;*
- *Incompatibility with current land use in nearby areas;*

- *No specific commitment for handling drainage;*
- *Proximity to Bayview Airport, creating potential environmental problems;*
- *Removal of secondary agricultural land;*
- *Failure to establish need for additional new housing on the scale proposed;*
- *No specific certain commitment for sewer lines beyond a 2-year period;*
- *Incompatibility with planned growth management in an agricultural area;*
- *Inadequacy of county revenues to provide urban services for a community of the proposed size.*[180]

Written findings of conformance and concurrency is an inherent requirement of growth management legislation. The solution to many real-world development problems is to identify reasonable levels of service and public expectations, and to create public/private partnerships to solve them. Such partnerships permit a developer to be charged for costs of impacts directly attributable to the project; and to contribute a pro rata share of the costs of solving regional problems. This will help the community fund and provide necessary facilities to meet regional needs.

F. Financing Public Improvements

Municipalities have encountered funding problems in the last several years, hindering their ability to finance public facility improvements. This has encouraged them to consider joint venture, off-site improvements with developers through a variety of devices.

1. Local Improvement Districts

Local Improvement Districts (LIDs) can be formed to share the cost of all or a portion of public improvements to properties that will benefit. An LID can include property inside or outside urban boundaries, and may be formed to install almost any public improvement, including streets,

sewer, water, lighting, parks and playgrounds, and underground utility lines.[181]

Two mechanisms exist for creating LIDs: (1) municipal resolution, or (2) petition for improvement, followed by adopting an ordinance approved by a majority of city council members.[182]

An LID may not be formed if the cost of all local improvement assessments exceeds the value of the property benefited within the entire district. An LID formed by resolution may not be formed if, within 30 days of adopting the LID ordinance, a notice of protest is filed by "...the owners of the property within the proposed local improvement district...subject to sixty percent or more of the total cost of the improvement. . . ."[183]

The key limitation on LIDs is that the cost of any improvements must be charged to the entire project area.[184] Cities will often contribute a "public share" to local improvements when oversizing (e.g., adding a third lane to an arterial) meets regional through-traffic needs, or the general upgrade of a two-lane road meets local needs.

2. Road Improvement Districts

A little-used provision of Washington law is the authority for counties to create road improvement districts. A road improvement district can be used to acquire rights-of-way or improve county roads, and to levy the cost against benefited owners.[185]

Districts are formed by petition (supported by owners of a majority of the lineal footage) or by resolution and election (a majority of the votes cast must support the district).[186]

Until 1965, a major disadvantage of road improvement districts was the requirement that "the average number of units per one thousand feet of property fronting upon the portion of the road to be improved shall be at least six. . . ."[187] This requirement has been eliminated.

3. Latecomer Agreements—Water or Sewer Facilities

A latecomer agreement can be used to reimburse developers for the cost of installing water and/or sewer facilities. These agreements allow a municipality to collect reimbursement for

facilities over a 15-year period. The statute allowing such facilities reads in pertinent part:

> *The governing body of any city, town, county, sewer district, water district, or drainage district, hereinafter referred to as a "municipality" may contract with owners of real estate for the construction of storm, sanitary, or combination sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances, hereinafter called "water or sewer facilities," within their boundaries or (except for counties) within ten miles from their corporate limits connecting with the public water or sewerage system to serve the area in which the real estate of such owners is located, and to provide for a period of not to exceed fifteen years for the reimbursement of such owners and their assigns by any owner of real estate who did not contribute to the original cost of such water or sewer facilities and who subsequently tap onto or use the same of a fair pro rata share of the cost of the construction of said water or sewer facilities, including not only those directly connected thereto. . . .*[188]

One important limitation is that the agreement must be recorded.

> *The provisions of such contract shall not be effective as to any owner of real estate not a party thereto unless such contract has been recorded in the office of the county auditor of the county in which the real estate of such owner is located prior to the time such owner taps into or connects to said water or sewer facilities.*[189]

The courts have specifically upheld such agreements as a reasonable means of acquiring water and sewer facilities, even though significant private benefit is also provided.[190]

4. Contracts for Street Projects

A separate statutory procedure applies to contracts between cities, towns and counties for construction of streets by property owners.[191] Contracting property owners are to be

reimbursed by other property owners who benefit from the improvements. Reimbursement is for a pro rata share of construction costs and contract administration, based upon benefit received.[192] To uphold the contract, an ordinance must be enacted requiring the street improvements as a condition of development. The Court of Appeals invalidated one such contract, adopted by the City of Puyallup, because the improvements were installed before the ordinance was adopted. Strict compliance with the prerequisite to the contract is absolutely necessary.[193]

5. Special Sewer, Water, or Public Benefit Districts

Most public improvements and area needs can be authorized and funded under recent legislation authorizing bond issues or special assessment districts.[194]

Legislation for public benefit districts is broad, granting specific powers to municipalities to fund "highways," "open space, park, recreation and community facilities," "public health and safety facilities," or "storm water control facilities."[195]

The legislation for sewer, water, and drainage systems is more focused and detailed, emphasizing the creation of storm water and sewage disposal districts. The legislation requires adopting a sewer and water comprehensive plan, and creating a special review committee representing cities, counties, and the public at large.[196]

Once founded, however, counties have broad authority to create storm water control or sewage districts without the archaic procedures of the old diking and drainage or other special purpose districts.

6. Economic Development Corporations

Ports or municipalities may create economic development corporations ("public corporations") to facilitate local economic development and employment opportunities.[197] Such corporations can issue nonrecourse industrial development revenue bonds for projects that will promote higher employment, encourage new jobs, protect existing employment, increase capital investment in industrial endeavors, promote the production and conservation of energy, and protect the quality of natural resources and the environment.[198]

The public corporation may also consider issuing industrial development bonds for manufacturing, processing, production, assembly, warehousing, transportation, pollution control, solid waste disposal, and energy facilities.[199]

If a public corporation wants to issue industrial development bonds for a proposed project, it will generally adopt guidelines to determine whether the project is eligible (and otherwise appropriate) for tax-exempt financing under federal tax laws and regulations.

Typically, a project must involve one or more of the following activities or facilities:

GUIDELINES FOR TAX-EXEMPT FINANCING

- Manufacturing, processing, production, assembly or warehousing of materials, manufactured or agricultural products, fisheries, or other natural resources and subordinate and ancillary utilities and administrative facilities;
- Warehousing and transportation facilities for storage and transport of products and materials and subordinate and ancillary utilities and administrative facilities;
- Transportation facilities such as airports, docks, wharves, mass commuting facilities, public parking facilities, public terminals, and related storage or training facilities;
- Pollution control facilities;
- Solid waste disposal facilities; and
- Energy facilities such as facilities for the local furnishing of electric energy or gas or qualified hydroelectric generating facilities.[200]

The project must increase or be essential to maintaining employment opportunities and economic development in the county. The project must also be located wholly within the district boundaries of a port or municipality, which is congruent with the county—except that energy facilities which provide energy for port district residents, or solid waste disposal facilities which dispose of the district's solid waste, may be located outside the boundaries of the district.[201]

The project must be consistent with federal tax laws and regulations, permitting issuance of tax-exempt bonds for industrial development facilities.

The project should be consistent with applicable land use planning requirements.

The applicant must demonstrate to the public corporation that the project is financially feasible.

ENDNOTES FOR CHAPTER 5

1 McQuillin, Municipal Corporation, §25.07, 21 (3d ed. 1983).

2 Shelton, supra, at 35.

3 RCW 35.63.080.

4 RCW 35.63.090.

5 McNaughton v. Boeing, 68 Wn.2d 659, 661, 414 P.2d 778 (1966).

6 Duckworth v. Bonney Lake, 91 Wn.2d 19, 27-28, 586 P.2d 860 (1978) (emphasis in original).

7 Duckworth, supra (quoting Rhyne, Municipal Law, 943 (1957)).

8 Duckworth, supra, at 30.

9 Berman v. Parker, 348 U.S. 26, 99 L. Ed.3d. 27, 75 S. Ct. 98 (1954). Duckworth, 91 Wn.2d at 31.

10 Duckworth, supra, at 31.

11 Carlson v. Bellevue, 73 Wn.2d 41, 435 P.2d 957 (1968).

12 McNaughton v. Boeing, 68 Wn.2d 659, 414 P.2d 778 (1966).

13 State v. Seattle, 94 Wn.2d 162, 615 P.2d 461 (1980).

14 SAVE, supra.

15 Southern Burlington County NAACP v. Mt. Laurel, 67 N.J. 151, 336 A.2d 713, cert. denied, 423 U.S. 808 (1975), cited with approval in SAVE, supra, at 871.

16 Duckworth, supra, at 29 (citing American Law of Zoning §1401, at 548).

17 Ackerley Communications v. City of Seattle, 92 Wn.2d 905, 602 P.2d 1177 (1979), cert. denied, 449 U.S. 804 (1980).

18 Lutz v. Longview, 83 Wn.2d 566, 520 P.2d 1374 (1974).

19 Lutz, supra, at 574.

20 Norco Construction v. King County, 97 Wn.2d 680, 684, 649 P.2d 103 (1982) (citing U.S. Const. amend. V, XIV), emphasis added.

21 RCW 36.70A.200.

22 See, e.g., Pierce v. Northeast Lake Washington Sewer & Water District, 123 Wn.2d 550, 870 P.2d 305 (1994).

23 Norco Construction v. King County, 97 Wn.2d 680, 684, 649 P.2d 103 (1982) (citing U.S. Const. amend. V, XIV).

24 See, e.g., Organization to Preserve Agricultural Lands v. Adams County, 128 Wn.2d 869, 913 P.2d 793 (1996), Maranatha Mining, Inc. v. Pierce County, 59 Wn. App. 795, 801 P.2d 985 (1990).

25 See, e.g., Sunderland Family Treatment Services v. City of Pasco, 127 Wn.2d 782, 903 P.2d 986 (1995), State ex rel. Standard Mining & Dev. Corp. v. City of Auburn, 82 Wn.2d 321, 510 P.2d 647 (1973).

26 See, e.g., Orion Corp. v. State, 103 Wn.2d 441, 693 P.2d 1369 (1985).

27 RCW 36.70.810(2).

28 Buechel v. DOE, 125 Wn.2d 196, 884 P.2d 910 (1994) (shoreline variance requires DOE's approval in addition to the City's).

29 In Sherwood v. Grant County, 40 Wn. App. 496, 699 P.2d 243 (1985), a divided court of appeals recently discussed the criteria to be used to evaluate a variance. In Sherwood, the majority upheld a variance to permit a mobile home in a traditional single family neighborhood. Under the ordinance in effect, mobile homes were not permitted in traditional single family neighborhoods. The Sherwoods owned a mobile home and requested a variance to permit them to keep the unit. The testimony was overwhelming in favor of keeping the

unit and that the unit did not depreciate the neighborhood. Nevertheless, the site could easily have been used for a traditional single family home. The court approved the variance to avoid the hardship to removing the home.

While the analysis is legally questionable since the site did have permissible alternatives, the case is evidence of the lengths even courts may go to avoid altering the status quo. Nevertheless, the case must be read for the analysis and not the result. The opposite result would be equally, if not more easily defensible.

30 See Lutz v. Longview, 83 Wn.2d 566, 520 P.2d 1374 (1974) for general discussion of planned unit developments.

31 Lutz, supra; see also Barrie v. Kitsap County, 84 Wn.2d 579, 585, 527 P.2d 1377 (1974).

32 RCW 36.70A.350.

33 State ex. rel. Myhre v. Spokane, 70 Wn.2d 207, 422 P.2d 790 (1967).

34 RCW 36.70A.130.

35 Smith v. Skagit County, 75 Wn.2d 715, 743, 453 P.2d 832 (1969), overruled on other grounds, Harris v. Hornbaker, 98 Wn.2d 650, 658 P.2d 1219 (1983). See also Chrobuck v. Snohomish County, 78 Wn.2d 858, 872, 480 P.2d 489 (1971).

36 See Smith, supra; Chrobuck, supra.

37 Keller v. Bellingham, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979).

38 Summit-Waller Ass'n v. Pierce County, 77 Wn. App. 384, 895 P.2d 405, rev. denied, 127 Wn.2d 1018 (1995).

39 Andrew v. King County, 21 Wn. App. 566, 586 P.2d 509 (1978).

40 Anderson v. Island County, 81 Wn.2d 312, 324, 501 P.2d 594 (1972), rev. denied, 91 Wn.2d 1023 (1979).

41 Andrew, supra. See also State ex rel. Lige & Wm. B. Dickson Co. v. Pierce County, 65 Wn. App. 614, 829 P.2d 217, rev. denied, 120 Wn.3d 1008 (1992).

42 Lutz, supra.

43 Johnson v. City of Mt. Vernon, 37 Wn. App. 214, 679 P.2d 405 (1984).

44 Hayden v. Port Townsend, 93 Wn.2d 870, 613 P.2d 1164 (1980), overruled on other grounds, SANE v. Seattle, 101 Wn.2d 288, 676 P.2d 1006 (1984).

45 Parkridge v. Seattle, 89 Wn.2d 454, 573 P.2d 359 (1978) (when a rezone implements policies of an adopted comprehensive plan, changed circumstances are not necessary to justify a rezone). See also Bjarnson v. Kitsap County, 78 Wn. App. 840, 844-46, 899 P.2d 1290 (1995); Save Our Rural Environment v. Snohomish County, 99 Wn.2d 363, 370-71, 662 P.2d 816 (1983).

46 Parkridge v. Seattle, 89 Wn.2d 454, 573 P.2d 359 (1978). For example, a neighborhood's desire is not sufficient per se to warrant a downzone. This is the flip side of the old spot zoning problem.

47 Hayden, supra.

48 Smith, supra; Chrobuck, supra.

49 Parkridge, supra; Carlson, supra.

50 West Main Assoc. v. Bellevue, 106 Wn.2d 47, 720 P.2d 782 (1986).

51 RCW 19.27.095(1).

52 RCW 58.17.033(1). See also Noble Manor v. Pierce County, 81 Wn. App. 141, 913 P.2d 417, aff'd, 133 Wn.2d 269 (1997) (under RCW 58.17.033, the submission of a completed short plat application vests the right to develop, not merely divide, the land under the regulations in effect at the time of the submission).

53 RCW 58.17.033(2) & .140.

54 Norco, supra.

55 Beach v. Board of Adjustment, 73 Wn.2d 343, 438 P.2d 617 (1968).

56 Talbot v. Gray, 11 Wn. App. 807, 525 P.2d 801 (1974), rev. denied, 85 Wn.2d 1001 (1975).

57 Juanita Bay Vly. Comm'ty Ass'n v. Kirkland, 9 Wn. App. 59, 510 P.2d 1140, review denied, 83 Wn.2d 1002 (1973).

58 Juanita Bay Vly. Comm'ty Ass'n v. Kirkland, 9 Wn. App. 59, 510 P.2d 1140, review denied, 83 Wn.2d 1002 (1973).

59 Mercer Enterprises v. Bremerton, 93 Wn.2d 624, 611 P.2d 1237 (1980), Valley View Industrial Park v. Redmond, 107 Wn.2d 621, 733 P.2d 182 (1987).

60 RCW 36.70A.090; 070(5)(b).

61 RCW 36.70A.390, 35.63.200.

62 Matson v. Clark County, 79 Wn. App. 641, 904 P.2d 317 (1995).

63 Chapter 58.08 RCW.

64 RCW 58.08.050 & 58.17.020(3).

65 RCW 58.08.030 & .040.

66 Law 1937, ch. 186, §§ 1 to 11.

67 RCW 58.16.060 (since repealed).

68 RCW 58.16.110 (since repealed).

69 Jones v. Town of Woodway, 70 Wn.2d 977, 425 P.2d 904 (1967) (Jones involved a plat in an unzoned area which was denied because the density was inconsistent with surrounding properties.)

70 Chapter 58.17 RCW.

71 RCW 58.17.020(1), (6)-(8).

72 RCW 58.17.040.

73 RCW 58.17.040(2).

74 RCW 58.17.110.

75 RCW 58.17.110; Loveless v. Yantis. 82 Wn.2d 754, 513 P.2d 1023 (1973).

76 RCW 86.16.041 & RCW 58.17.120.

77 RCW 58.17.310.

78 RCW 58.17.140.

79 RCW 58.17.100.

80 RCW 58.17.330.

81 RCW 57.17.110(1).

82 RCW 58.17.100.

83 RCW 58.17.330(1) & (2).

84 Breuer v. Fourre, 76 Wn.2d 582, 458 P.2d 168 (1969); See also Snider v. Board of County Commissioners, 85 Wn. App. 371, 932 P.2d 704 (1997) (the court of appeals held that a plat condition requiring developer to acquire rights-of-way over third party property was not arbitrary and capricious, and the superior court had no authority to modify the plat condition to require the board to exercise its power of eminent domain to acquire rights-of-way over third party property since the power of eminent domain is a core function of the legislative branch).

85 Pacific County v. Sherwood Properties, 17 Wn. App. 790, 567 P.2d 642 (1977), rev. denied, 89 Wn.2d 1013 (1978).

86 RCW 82.02.020, .050-.090; Vintage Constr. Co. v. Bothell, 83 Wn. App. 605, 922 P.2d 828 (1996), aff'd, 135 Wn.2d 833 (1998).

87 RCW 58.17.100 & .330; see, Smith v. Skagit County, 75 Wn.2d 715, 453 P.2d 832 (1969), overruled on other grounds, Harris v. Hornbaker, 98 Wn.2d 650, 658 P.2d 1219 (1983).

88 Parkridge v. Seattle, 89 Wn.2d 454, 573 P.2d 359 (1978).

89 RCW 58.17.195.

90 Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 947 P.2d 1208 (1997).

91 Johnson v. City of Mt. Vernon, 37 Wn. App. 214, 679 P.2d 405 (1984).

92 RCW 36.70C.130.

93 RCW 36.70C.040(3), (4).

94 Loveless v. Yantis, 82 Wn.2d 754, 513 P.2d 1023 (1973); DNR v. Thurston County, 92 Wn.2d 656, 601 P.2d 494 (1979), cert. denied, 449 U.S. 830 (1980).

95 Norco Construction v. King County, 97 Wn.2d 680, 649 P.2d 103 (1982).

96 Adams v. Thurston County, 70 Wn. App. 471, 855 P.2d 284 (1993).

97 Norco Construction, at 688.

98 RCW 36.70B.030 & .040.

99 Jablinske v. Snohomish County, 28 Wn. App. 848, 851, 626 P.2d 543 (1981) (citation omitted) (emphasis added).

100 RCW 58.17.140.

101 Norco Construction, at 690.

102 Chapter 64.40 RCW.

103 RCW 58.17.170.

104 RCW 58.17.130.

105 RCW 58.17.130 (emphasis and enumeration added).

106 RCW 58.17.200.

107 RCW 58.17.170.

108 RCW 58.17.200.

109 RCW 58.17.210.

110 RCW 58.17.300.

111 RCW 58.17.210. Crown Cascade, Inc. v. O'Neal, 100 Wn.2d 256, 668 P.2d 585 (1983).

112 RCW 58.17.060.

113 RCW 58.17.140.

114 RCW 58.17.060.

115 RCW 58.17.065.

116 RCW 58.17.020(7).

117 RCW 58.17.040(4), (5) & (7).

118 In Strauss v. City of Sedro Woolley, 88 Wn. App. 376, 944 P.2d 1088 (1997), rev. denied, 135 Wn.2d 1002 (1998) the court held that the condominium statute may not be used as a mechanism to avoid the requirements of the subdivision statute. Requiring a condominium developer to comply with the subdivision statute or file a binding site plan does not violate the Condominium Act, which prohibits zoning laws and other requirements which impose requirements on condominiums which do not apply to other forms of property ownership.

119 Kenart & Associates v. Skagit County, 37 Wn. App. 295, 680 P.2d 439, rev. denied, 101 Wn.2d 1021 (1984); Buchsieb/Danard Inc. v. Skagit County, 99 Wn.2d 577, 663 P.2d 487 (1983).

120 Buchsieb/Danard Inc. v. Skagit County, 99 Wn.2d 577, 663 P.2d 487 (1983).

121 Adoption of Chapter 58.16 RCW (now repealed).

122 Adoption of Chapter 58.17 RCW.

123 §32, Chapter XIX, Laws of 1890 p. 603; Howell v. King County, 16 Wn.2d 557, 134 P.2d 80 (1943).

124 RCW 58.17.020(1).

125 Spokane County Superior Court, Cause No. 247305(1978).

126 Ops. Atty. Gen. 1980, No. 5.

127 Chapters 58.11 & 58.22 RCW (now repealed).

128 RCW 58.17.212; Chapters 36.87 & 35.79 RCW.

129 Chapter 58.18 RCW.

130 Chapter 58.09 RCW.

131 Ops. Atty. Gen. 1980, No. 5.

132 RCW 58.04.020.

133 RCW 58.17.200.

134 RCW 58.17.205.

135 RCW 58.17.165.

136 Knudsen v. Patton, 26 Wn. App. 134, 611 P.2d 1354, rev. denied, 94 Wn.2d 1008 (1980).

137 RCW 58.08.050.

138 RCW 58.17.165.

139 Rainier Ave. Corp. v. Seattle, 80 Wn.2d 362, 494 P.2d 966, cert. denied, 409 U.S. 983 (1972).

140 See, e.g., Pacific County v. Sherwood, 17 Wn. App. 790, 796, 567 P.2d 642 (1977) (acceptance requires an affirmative act).

141 Hanford v. Seattle, 92 Wash. 257, 260, 159 Pac. 987 (1916)(paragraph emphasis added).

142 RCW 36.75.070 & .080.

143 RCW 58.17.212.

144 Chapter 36.87 RCW (county roads) or Chapter 35.79 RCW (city streets).

145 RCW 36.87.090.

146 RCW 35.79.035(1).

147 RCW 79.93.010-070.

148 Toandos Peninsula Ass'n. v. Jefferson County, 32 Wn. App. 473, 481, 648 P.2d 448 (1982) (citations omitted).

149 Lechelt v. Seattle, 32 Wn. App. 831, 835, 650 P.2d 240 (1982), rev. denied, 99 Wn.2d 1005 (1983); see also RCW 58.17.165.

150 Breuer v. Fourre, 76 Wn.2d 582, 458 P.2d 168 (1969).

151 RCW 82.02.020 & .050-.090.

152 Miller v. Port Angeles, 38 Wn. App. 904, 909-910, 691 P.2d 229 (1984), rev. denied, 103 Wn.2d 1024 (1985) (citations omitted).

153 Miller, at 910-911 (citations omitted).

154 State ex rel. Myhre v. Spokane, 70 Wn.2d 207, 422 P.2d 790 (1967).

155 SAVE v. Bothell, 89 Wn.2d 862, 576 P.2d 401 (1978).

156 Miller, at 912-913 (citations omitted).

157 Pioneer Trust & Savings Bank v. Village of Mt. Prospect, 176 N.E. 2d 799, 802 (Illinois 1969) (emphasis added).

158 Ayres v. Los Angeles, 207 P.2d 1 (Cal. 1949). See also Stanley R. Schultz, Subdivision and Platting, "Zoning: Land Use By Permit," The Environmental and Land Use Law Section, Washington State Bar Association (1978).

159 Henderson Homes v. Bothell, 124 Wn.2d 240 (1994); Trimen Development v. King County, 124 Wn.2d 261 (1994). Both cases considered the prohibition on development taxes set forth at RCW 82.02.020.

160 Trimen, at 271-75.

161 Dolan v. City of Tigard, 512 U.S. 374, 129 L. Ed. 2d 304, 114 S. Ct. 2309 (1994).

162 RCW 82.02.020. (emphasis added).

163 Compare Snider v. Board of County Commissioners, 85 Wn. App. 351, 932 P.2d 704 (1997), with Benchmark v. City of Battle Ground, _____ Wn. App. _____, _____, P.2d _____ (Div. II 1999).

164 Adams, at 475.

165 Pentegram v. Seattle, 28 Wn. App. 219, 229, 622 P.2d 892 (1981) (decision of local body is arbitrary and capricious absent written findings and conclusions).

166 Lund v. Tumwater, 2 Wn. App. 750, 472 P.2d 550 (1970) (no standards to control permits for multi-family housing not authorized by underlying zoning); Pentegram v. Seattle, (may not go beyond building code for "special reasons" without specific authority); but see, State ex rel. Standard Mining v. Auburn, 82 Wn.2d 321, 510 P.2d 649 (1973) (to "protect the public interest" is an adequate standard in the context of a special use permit for a gravel pit where public interest is further identified in a comprehensive plan); Anderson v. Issaquah, 70 Wn. App. 64, 851 P.2d 744 (1993).

167 Lenci v. Seattle, 63 Wn.2d 664, 388 P.2d 926 (1964).

168 RCW 58.17.033(1).

169 Adams, at 482.

170 1998 WL 184900 (Wn. App. Div. 1)

171 Hale v. Island County, 88 Wn. App. 764, 946 P.2d 1192 (1997).

172 133 Wn.2d 269, 943 P.2d 1378 (1997); See also Schneider v. City of Kent, 87 Wn. App. 774, 942 P.2d 1096 (1997), rev. denied, 134 Wn.2d 1021 (1998) (upon submittal of preliminary plat application, developer is entitled to have both that application and its companion PUD application considered under ordinances then in effect).

173 Mission Springs v. City of Spokane, 134 Wn.2d 947, 954 P.2d 250 (1998).

174 RCW 82.02.050-100.

175 RCW 82.02.050(3)(a)-(c).

176 RCW 82.02.050(4).

177 RCW 82.02.060(1).

178 RCW 82.02.090(3).

179 Vintage Construction Co., Inc. v. City of Bothell, 83 Wn. App. 605, 922 P.2d 828 (1996), aff'd, 135 Wn.2d 833, 959 P.2d 1090 (1998).

180 Buchsieb/Danard, at 579 (enumeration deleted) (emphasis added).

181 RCW 35.43.040-042.

182 RCW 35.43.070.

183 RCW 35.43.180.

184 Sterling Realty v. Bellevue, 68 Wn.2d 760, 415 P.2d 627 (1966) (the city could not charge the cost of acquiring a right-of-way along one side of a street to only a portion of the district even though the needed right-of-way on the other side of the street had already been obtained).

185 Chapter 36.88 RCW.

186 RCW 36.88.020-.050.

187 Former RCW 36.88.010 (amended by Washington Laws, 1965, Chapter 60, §1).

188 RCW 35.91.020.

189 RCW 35.91.020.

190 Steilacoom v. Thompson, 69 Wn.2d 705, 419 P.2d 989 (1966).

191 Chapter 35.72 RCW.

192 RCW 35.72.020.

193 Woodcreek Partnerships v. Puyallup, 69 Wn. App. 1, 847 P.2d 501 (1993).

194 Chapter 36.89 RCW and Chapter 36.94 RCW.

195 RCW 36.89.010.

196 RCW 36.94.030-.050.

197 Chartered under Washington Constitution Article XXXII, Section (1) and Chapter 39.84 RCW (the Local Economic Development Act of 1981).

198 RCW 43.163.090 & .130.

199 Chapter 39.84 RCW & RCW 43.160.050(11).

200 RCW 43.160.060(2) & .070(1)(b).

201 RCW 39.84.080(3).